

Decision 05-01-041 January 27, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company (U 39 M), a California Corporation, and Lehigh Southwest Cement Company for an Order Authorizing the Sale and Conveyance of a Certain Parcel of Land in Shasta County Pursuant to Public Utilities Code Section 851.

Application 04-09-006  
(Filed September 7, 2004)

**O P I N I O N**

**1. Summary**

Pursuant to Pub. Util. Code § 851, we approve the sale and conveyance by Pacific Gas and Electric Company (PG&E) of a certain parcel of land located in Shasta County to Lehigh Southwest Cement Company (Buyer). We also approve an agreement between PG&E and the Commission's Office of Ratepayer Advocates (ORA) to refer the issue of proceeds of this sale to our gain-on-sale proceeding, Rulemaking (R.) 04-09-003.

**2. Background**

PG&E on September 7, 2004, filed this application for authority to sell and convey approximately 5.7 acres of land in Shasta County to Buyer for a purchase price of \$5,500. Buyer's cement production facility is a growing enterprise that supplies cement to Northern California, Northern Nevada and Southern Oregon. The property is a 50-foot-wide strip of land that bisects large properties already owned by Buyer and used as a quarry site for limestone and shale, the raw material and primary components of cement.

The strip of land contains a 12-kilovolt (kV) distribution pole line that serves the Bass Mountain Beacon. As terms of the sale, PG&E would relocate the distribution facilities at Buyer's expense and would be granted an easement for the new location of the facilities.

PG&E states that reserving an easement will be more advantageous to the company and its ratepayers than continuing to own the property. With an easement, the company retains all rights necessary for maintenance and operation of the distribution facilities while avoiding payment of property taxes and the cost of maintaining the property.

### **3. Withdrawal of Protest**

ORA filed a protest of the application on October 8, 2004, objecting to PG&E's plan to book any gain on sale from the transaction for the benefit of shareholders. ORA urged instead that the issue of gain on sale be referred to R.04-09-003, our open rulemaking proceeding addressing gain-on-sale issues.

PG&E replied to the protest, arguing that gain on sale of land traditionally has gone to shareholders, but agreeing with ORA that the issue should be referred to the gain-on-sale rulemaking.

The parties on November 30, 2004, filed a joint motion in which ORA withdrew its protest on the condition that the gain-on-sale issue is referred to R.04-09-003. The parties also agreed to joint stipulated facts to assist the Commission in applying any future decision in R.04-09-003 to this sale. The following facts are uncontested:

1. The property consists of approximately 5.7 acres of unimproved real property located in an unincorporated area of Shasta County.

2. PG&E has informed the Buyer that the chain of title to the property indicates a gap at the time the United States Government (the previous owner) obtained the property.
3. Buyer is aware of the title defect and still wishes to purchase the property without the benefit of title insurance and will accept a quitclaim deed in lieu of a grant deed.
4. The property is a 50-foot-wide strip known as the Calaveras Bass Mountain Fee Strip property.
5. The fee strip contains a 12-kV distribution pole that serves the Bass Mountain Beacon.
6. PG&E will relocate its electric distribution facilities currently on the property at the Buyer's expense and will be granted an easement at the new location to maintain and operate the facilities.
7. The property has historically been classified as electric distribution utility plant.
8. The property is currently in ratebase and will be removed from ratebase upon its sale.
9. The property was purchased in 1959 for \$10.
10. The property has been in ratebase since 1959, has a net book value of \$10, and is non-depreciable.
11. The purchase price of the property is \$5,500.
12. The pre-tax gain on sale is \$5,490 and the after-tax gain on sale is \$3,253.
13. The property's estimated 2004 revenue requirement, including taxes, franchise requirements and provision for uncollectible accounts, is \$65.

14. The estimated revenue requirement is based upon the annual property tax for 2003-2004 of \$63, annual operations and maintenance costs of \$0, and PG&E's 2003 authorized cost of capital for distribution assets (11.22% on equity; 9.24% on rate base).

#### 4. Discussion

No public utility may transfer its property that is necessary or useful in the performance of its duties to the public without first having secured the Commission's authorization. (Pub. Util. Code § 851.) The parcel of land at issue here is not necessary for utility service so long as PG&E has an easement for continued operation of facilities now on the parcel.

The purchase price for the parcel is \$5,500. PG&E estimates that the sale will result in a net-of-tax gain of \$3,253, which PG&E believes should accrue to shareholders in conformance with past decisions of this Commission stemming from its “Redding II” decision in 1989. (*Re Rate-Making Treatment of Capital Gains Derived From the Sale of a Public Utility System Serving an Area Annexed by a Municipality or Public Entity* (1989) 32 CPUC2d 233, 234.) Nevertheless, PG&E agrees with ORA that the gain-on-sale issue should be referred to R.04-09-003 for resolution.

Under the California Environmental Quality Act (CEQA), we must consider the environmental consequences of projects, as defined, that are subject to our discretionary approval. (Pub. Resources Code § 21080 and § 21065.) Under the CEQA Guidelines (Cal. Code Regs, tit. 14, § 15000, et seq.), where a project is to be approved by more than one public agency, one agency becomes the “Lead Agency” responsible for environmental review, and all other agencies with discretionary approval over the project are “Responsible Agencies.” (Guidelines, § 15050, Pub. Resources Code § 21165.)

Here, the Shasta County Department of Resource Management is the Lead Agency for this project under CEQA and the Commission is a Responsible Agency. CEQA requires that the Commission consider the Lead Agency's environmental documents and findings before acting upon or approving a project. (CEQA Guidelines Sections 15050(b) and 15096.) The specific activities which must be carried out by a Responsible Agency are contained in the CEQA Guidelines Section 15096.

PG&E states that the environmental review for the project has already been conducted by the County of Shasta as Lead Agency under CEQA and that the Commission's role should be that of a Responsible Agency under CEQA. In support of its position, PG&E submitted with its application a copy of the Notice of Determination for the project as filed with the State Clearinghouse dated November 20, 2003 (SCH No. 2003092024), a Notice of Determination dated January 2, 2004, and Revised Initial Study and Mitigated Negative Declaration dated October 9, 2003.

As a Responsible Agency under CEQA, we have reviewed these environmental documents and find them adequate for our decision-making purposes. In particular, the environmental review evaluates a revised reclamation plan for the Falkenbury Quarry, with Lehigh Southwest Cement Plant as the project applicant. The revised reclamation area is consistent with the current approved mine use permit and no new mining area is proposed. The existing quarry size is 58 acres and the quarry will be expanded to 355 acres of mined and reclaimed area. The environmental review includes relocation of the power lines owned by PG&E.

In approving the project, the County determined that with implementation of the adopted mitigation measures, the project will not have a significant impact

on the environment. The County found that the project would have no or less than significant impacts in all study areas except cultural resources. With respect to cultural resources the County found the potentially significant environmental impacts could result from an adverse change in the significance of an archaeological resource. The adopted mitigation measures include establishing buffer zones around two identified archaeological sites, steps to be taken in the event previously undiscovered sites are uncovered, implementation of duct control and air quality compliance measures, and a requirement to apply mitigation measures as may be determined by the Department of Fish and Game regarding stream bed or bank reclamation. With the implementation of these measures, the County found that the potentially significant environmental impacts would either be avoided or reduced to less than significant levels.

Based on review of the County's environmental documents, we believe that the County reasonably concluded that in all areas except cultural resources, the project will not have a significant impact on the environment. With respect to cultural resources, we believe the County adopted reasonable mitigation measures to ensure the project will have a less than significant impact on the environment. We adopt the County's findings and mitigations for purposes of our approval.

## **5. Categorization and Need for Hearings**

In Resolution ALJ 176-3139, dated September 23, 2004, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. With the withdrawal of ORA's protest, public hearing is not necessary. The preliminary determinations made in Resolution ALJ 176-3139 are affirmed.

## **6. Uncontested Decision Grants Relief Requested**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **7. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. PG&E is an electric utility subject to the jurisdiction of this Commission.
2. Notice of the filing of the application appeared in the Daily Calendar on September 24, 2004.
3. ORA protested the application, but it subsequently withdrew its protest on the condition that gain-on-sale issues are referred to a pending proceeding, R.04-09-003.
4. Buyer is a cement production company that seeks to buy 5.7 acres of PG&E-owned land near Buyer's existing quarry.
5. PG&E has agreed to sell the land to Buyer.
6. The subject property is located in Shasta County.
7. The purchase and sale agreement provides that PG&E will relocate transmission facilities on the property at Buyer's expense.
8. Shasta County is the Lead Agency for the project under CEQA.
9. The Commission is a Responsible Agency for the project under CEQA.
10. Shasta County adopted a Mitigated Negative Declaration for the project finding that with the implementation of mitigation measures the project will not have a significant effect on the environment.

11. Shasta County determined that the project would have no or less than significant environmental impacts in all study areas except cultural resources.

12. Shasta County adopted mitigation measures to either eliminate or reduce potential cultural resource environmental impacts to less than significant levels.

13. The sale and conveyance of the property will not adversely affect existing ratepayers.

### **Conclusions of Law**

1. A public hearing is not necessary.

2. The sale and conveyance of the property system is subject to Pub. Util. Code § 851.

3. The Commission has considered Shasta County's environmental review documents and we find these documents adequate for our decisionmaking purposes.

4. We adopt Shasta County's environmental finding that in all study areas except cultural resources the project will not have a significant impact on the environment.

5. With respect to potentially significant environmental impacts to cultural resources we find that Shasta County adopted reasonable mitigation measures to either eliminate or reduce those impacts to less than significant levels. We adopt Shasta County's findings and mitigations for purposes of our approval.

6. The sale and conveyance of the property should be approved.

7. PG&E should be authorized to enter into the purchase and sale agreement attached to the application.

8. PG&E should be directed to book gain on sale of this transaction in accordance with the final decision approved by the Commission in R.04-09-003.



9. The order should be effective today to allow the proposed sale to be executed on an expeditious basis.

**O R D E R**

**IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) may sell and convey to Lehigh Southwest Cement Company (Buyer) a certain parcel of land located in Shasta County, as more fully set forth in the application and its exhibits and subject to the terms and conditions described therein.

2. PG&E shall book gain on sale from the transaction in a temporary account, pending a final decision by this Commission in Rulemaking (R.) 04-09-003, at which time such gain on sale shall be booked in accordance with that final decision.

3. The authority granted herein shall expire if not exercised within one year of the date of this order.

4. Application 04-09-006 is closed.

This order is effective today.

Dated January 27, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

Comr. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.